IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.374 OF 2003

IN

SUMMARY SUIT NO.3918 OF 2002

Jayesh Shah .. Plaintiff

versus

M/s Shrirang Agro Chem P.Ltd & ors.. Defendants

...

Mr.S.A.Udaipuri for Plaintiff.

Mr.K.R.Tiwari for Defendants.

CORAM : D.G. KARNIK, J

DATED : 23rd February, 2005.

P.C:-

1. Heard learned counsel for the parties. Learned counsel for the plaintiff hands in the compilation of documents. The documents are taken on record and collectively marked A for identification. The plaintiff lent and advanced to the defendant no.1 a loan of Rs.6,00,000/-. In consideration thereof the defendant no.1 executed two different promissory notes of Rs.4,00,000/- and Rs.2,00,000/-. The defendants

also issued two post dated cheques for Rs.4,00,000/- and Rs.2,00,000/-. The original promissory notes as well as the cheques are produced on record. As the defendant no.1 failed and neglected to make the payment the plaintiff demanded the payment by advocate's notice, office copy of which and acknowledgment is also produced on record. Despite this the defendants failed and neglected to make the payment. Hence, the plaintiff has filed this suit for recovery of the amount.

2. In reply to the Summons for Judgment filed by the defendant no.1 in his capacity as the Managing Director of defendant no.1 it is contended that the loan has been repaid. However, no proof of repayment has been adduced. The defendant no.1 is a company incorporated and registered under the Companies Act, 1956. Not even a statement of account showing the payment has been produced. In the circumstances, the defence that the defendant no.1 has repaid the loan is sham and fictitious and totally unbelievable.

3. As regards the defendant nos. 2 and 3 they have not personally taken the loan and therefore they are not personally liable. Learned counsel for the

plaintiff therefore does not press the Summons for Judgment nor does he press the suit against them. The Summons for Judgment and the suit against the defendant nos. 2 and 3 is therefore dismissed.

4. The plaintiff through his counsel, gives up the claim for interest prior to the date of the suit. Future interest would be governed by section 34 of the Code of Civil Procedure.

5. For the reasons mentioned therein the Summons for Judgment is made partly absolute against the defendant no.1 and suit of the plaintiff is also decreed partly against the defendant no.1 in the following terms:

> " The defendant no.1 shall pay to the plaintiff a sum of Rs.6,00,000/- together with interest thereon at the rate of 9 % p.a. from the date of the suit till payment and all costs of the suit. "

D.G.KARNIK, J